Filed 6/29/15 P. v. Guzman CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JERRY GUZMAN,

Defendant and Appellant.

G049004

(Super. Ct. No. 12CF0902)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard M. King, Judge. Affirmed.

Steven A. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton, and Minh U. Le, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury convicted Jerry Guzman of torture (Pen. Code, § 206; all further statutory references are to this code unless otherwise designated), attempted extortion by threat (§ 524), and aggravated assault (§ 245, subd. (a)(1)). On all three counts, the jury found gang enhancement allegations to be true. (§ 186.22, subd. (b)(1).) The jury also found Guzman inflicted great bodily injury in committing the aggravated assault. (§ 12022.7, subd. (a).) The trial court sentenced Guzman to a term of life plus 10 years.

Guzman challenges the sufficiency of the evidence to support his convictions for torture and extortion by threat, and to support the gang enhancements. He also argues: (1) the trial court erred in admitting hearsay evidence from the gang expert; (2) the prosecutor committed misconduct by diluting the reasonable doubt standard; (3) the prosecutor committed misconduct by urging the jury to consider evidence for an improper purpose; and (4) the cumulative error doctrine applies. As we explain, these contentions are without merit, and we therefore affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

On the evening of February 24, 2012, Elpidio Alvarez helped clean Saeed Muhammad's store in a Santa Ana strip mall. While taking out the trash at 7:45 p.m., Alvarez saw a black car drive up near him and come to a stop. Guzman, whom Alvarez did not know and had never seen before, exited the car and approached Alvarez. Guzman accused Alvarez of selling forged "green cards" to immigrants without first paying Guzman to do so. Guzman told Alvarez: "This is my neighborhood. If you want to do that here, you got to pay me." Alvarez denied selling anything, refused to pay Guzman, and turned to walk away.

Guzman then hit Alvarez from behind, causing him to lose consciousness temporarily and fall down. Guzman then continued to brutalize Alvarez by hitting and kicking him in the head and face while he was disabled on the ground. Alvarez believed the beating lasted for three to four minutes. Eventually, Muhammad intervened and separated Guzman from Alvarez. Guzman then drove away in the car.

Guzman's blows tore Alvarez's ear, opened a cut near his left eye, and gashed his lip open, requiring nine stitches each in both his lip and his ear. At the time of trial in December 2012, Alvarez continued to have hearing problems.

At trial, Officer Jeff Launi testified as a gang expert. He explained that Guzman's gang, Los Compadres, claimed as its home territory a mile-square area that included the strip mall where the incident occurred. He also explained that the gang's primary activities include robberies, carjackings, and weapons violations.

When the prosecutor asked Launi a hypothetical question closely tracking the facts in Guzman's alleged assault, Launi opined the assault would benefit the gang member's gang. Based on his interviews with more than 3,000 gang members, he explained that collecting money under threat of an assault or beating directly benefits the gang because the funds can be put to gang purposes. He also noted a Los Compadres member had told him that "money derived in the form of . . . 'taxes' . . . specifically obtained from this shopping center or the activities that they tax at this shopping center . . . w[as] used to buy food and alcohol for a gang meeting." Acts of violence also benefit the gang because it increases fear and respect for the individual and his gang within the community and from rival gangs.

In May 2006, Launi personally observed Guzman with two other documented Los Compadres gang members. Launi explained this prior contact was

significant, along with Guzman demanding money from Alvarez in the gang's territory, because nothing in his thousands of gang interviews suggested a nongang member would extort a commission or collect a tax for a gang.

The jury convicted Guzman as noted above, and he now appeals.

II

DISCUSSION

A. *Sufficiency of the Evidence*

Guzman challenges the sufficiency of the evidence to support his convictions for attempted extortion and torture and to support the gang enhancement. "In reviewing a sufficiency of evidence claim, the reviewing court's role is a limited one. '"'The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]"' [Citations.]" '"'Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder. [Citations.]" [Citation.]' [Citation.]" (*People v. Smith* (2005) 37 Cal.4th 733, 738-739.)

1. Attempted Extortion

"Extortion is the obtaining of property from another, with his consent, . . . induced by a wrongful use of force or fear . . . ." (§ 518.) A person who tries, by means of such a threat, to extort money or other property from another is guilty of attempted extortion. (§ 524.) "The elements of the crime of attempted extortion are (1) a specific intent to commit extortion and (2) a direct ineffectual act done towards its commission." (*People v. Sales* (2004) 116 Cal.App.4th 741,749.) "Preparation alone will not establish an attempt. There must be '"some appreciable fragment of the crime committed [and] it must be in such progress that it will be consummated unless interrupted by circumstances independent of the will of the attempter . . . ."'" (*Ibid*.)

Guzman contends the evidence does not show he tried to extort any property from Alvarez. He notes that after his alleged statement to Alvarez demanding a "commission" from the sale of any illegal green cards, he never again mentioned payment. Guzman reasons the jury could not conclude he wanted anything from Alvarez because he did not ask Alvarez for anything while beating him. According to Guzman, hitting and kicking Alvarez was not an attempt to get any property from Alvarez; rather, the evidence showed only that he beat Alvarez for turning his back on him.

Guzman, however, began hitting and kicking Alvarez shortly after Alvarez refused to pay Guzman and turned to walk away. Because Guzman never stated why he beat Alvarez, the jury was entitled to draw its own inference. A reasonable jury could conclude from this evidence that Guzman began hitting Alvarez in an attempt to obtain the "commission" he demanded. Although Guzman offered an alternative explanation for why he beat Alvarez, the existence of inferences other than the jury's conclusion does

not require reversal. (*People v. Thomas* (1992) 2 Cal.4th 489, 514 (*Thomas*).) Sufficient evidence supports the jury's verdict finding Guzman guilty of attempted extortion.

2. Torture

Section 206 provides in relevant part: "Every person who, with the intent to cause cruel or extreme pain and suffering for the purpose of revenge, *extortion*, persuasion, or for any sadistic purpose, inflicts great bodily injury as defined in Section 12022.7 upon the person of another, is guilty of torture." (Italics added.) Section 12022.7, subdivision (f), defines great bodily injury as "significant or substantial physical injury."

"'[T]orture has two elements: (1) a person inflicted great bodily injury upon the person of another, and (2) the person inflicting the injury did so with specific intent to cause cruel and extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose.' [Citation.]" (*People v. Pre* (2004) 117 Cal.App.4th 413, 419 (*Pre*).)

"[T]orture as defined in section 206 focuses on the mental state of the perpetrator and not the actual pain inflicted." (*People v. Hale* (1999) 75 Cal.App.4th 94, 108.) "'[T]he circumstances of the offense can establish the intent to inflict extreme or severe pain.' [Citation.] For example, 'a jury may infer intent to cause extreme pain from a defendant who focuses his attack on a particularly vulnerable area, such as the face, rather than indiscriminately attacking the victim.' [Citation.]" (*People v. Hamlin* (2009) 170 Cal.App.4th 1412, 1426-1427.) Inflicting pain after the victim has become incapacitated and incapable of resisting may also reflect the specific intent embodied in torture. (See, e.g., *Pre, supra,* 117 Cal.App.4th at p. 422 ["[W]hile [the

victim] was unconscious, [defendant] changed his position, cradled [victim's] head and shoulders in his lap, and proceeded to bite her ear"].)

Guzman focused his attack on a particularly vulnerable area, by hitting and kicking Alvarez in the face, as evidenced by the resulting injuries. Like the defendant in *Pre*, Guzman continued to beat Alvarez after he became incapacitated and incapable of defending himself. Although Alvarez lost consciousness and fell to the ground after Guzman's initial attack, Guzman continued to beat Alvarez. A reasonable jury could conclude that Guzman intended to cause Alvarez cruel and extreme pain and suffering.

According to Guzman, the evidence suggests he did not beat Alvarez to extort funds, but because he is a bully. This argument fails for the same reason as his extortion argument. Guzman began beating Alvarez shortly after Alvarez refused to pay Guzman and turned to walk away. A reasonable jury could conclude from this evidence that Guzman beat Alvarez in an attempt to extort a commission from him. As noted above, other inferences the jury could have drawn do not defeat the substantial evidence supporting the crime. (*Thomas, supra,* 2 Cal.4th at p. 514.)

3. Gang Enhancements

Section 186.22, subdivision (b)(1), authorizes a penalty enhancement for "any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members." A gang expert's testimony alone is insufficient to find an offense gang related. (*People v. Ferraez* (2003) 112 Cal.App.4th 925, 931.) "[T]he record must provide some evidentiary support, other than merely the defendant's record of prior offenses and past gang activities or personal affiliations, for a finding that the *crime* was committed for the benefit of, at the direction

of, or in association with a criminal street gang." (*People v. Martinez* (2004) 116 Cal.App.4th 753, 762.)

Guzman contends that because he did not display gang signs, nor gang attire or tattoos, his conduct could not have enhanced or benefitted his gang's reputation, or created fear in the community. Guzman also argues that because the crimes were not committed in the presence of or with the knowledge of gang members, and because the offense was not directed at a rival gang member, Guzman's conduct was not gang related, or for the gang's benefit. Although these indicia of gang activity generally support the enhancement when present, they are not *required* to demonstrate that an offense is gang related.

The prosecutor properly elicited by hypotheticals Launi's opinion that Guzman's conduct was gang related (*People v. Gonzalez* (2006) 38 Cal.4th 932, 946-947), and Launi's bare opinion was not the sole basis for the jury's finding. The facts admitted into evidence amply support the jury's conclusion. Launi testified that demanding commissions was "a reasonably common activity that gangs are involved in." Commissions benefit the gang as a source of income distributed among members. The fact that Guzman associated with the gang asserting control over the neighborhood, and seemed to have some leadership in meeting with known gang members there and claimed the strip mall as his domain, according to several witnesses, supports the conclusion the offenses were gang related . Launi explained that gangs control taxing or extortion activity in their territory and someone engaging in that conduct for anyone but the gang would be confronted or assaulted. The jury reasonably could conclude Guzman would not run the risk of betraying the gang or incurring its wrath and punishment, particularly since he boldly committed the offense in front of several witnesses. Based on the

evidence presented, including the gang expert's opinion, a rational trier of fact could conclude beyond a reasonable doubt that Guzman committed his offenses for the benefit of his gang. (*People v. Barnes* (1986) 42 Cal.3d 284, 303.)

B. *Testimonial Hearsay*

Guzman contends foundation material on which the gang expert based his opinion in support of the gang enhancements violated his right to due process and his Sixth Amendment right of confrontation. Specifically, he now challenges Launi's reference to a conversation he had with a member of Los Compadres explaining how the gang used "tax" money, including funds derived at the same strip mall where Alvarez was assaulted. We generally review the trial court's evidentiary rulings for an abuse of discretion. (*People v. McDowell* (2012) 54 Cal.4th 395, 426.) But we conduct de novo review when the issue is whether admission of evidence violated the federal constitution. (*People v. Mayo* (2006) 140 Cal.App.4th 535, 553.)

Guzman only raised a general pretrial confrontation clause objection to Launi's overall testimony, and did not renew his objection at trial or tailor it to particular evidence admitted at trial. He made no objection when the prosecutor elicited the statements he now challenges. He therefore forfeited his claim. "The general rule is that 'when an *in limine* ruling that evidence is admissible has been made, the party seeking exclusion must object at such time as the evidence is actually offered to preserve the issue for appeal' [citation], although a sufficiently definite and express ruling on a motion in limine may also serve to preserve a claim.' [Citation.]" (*People v. Brown* (2003) 31 Cal.4th 518, 547.) Evidence Code section 353 prohibits reversal for erroneous admission of evidence unless "[t]here appears of record an objection to or a motion to exclude or to strike the evidence that was timely made and so stated to make clear the

specific ground of the objection or motion." (See, e.g., *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. 305, 313, fn. 3 ["The right to confrontation may, of course, be waived, including by failure to object to the offending evidence"].)

Guzman argues he received ineffective assistance of counsel (IAC) when his attorney failed to object. The standard of review for an IAC claim is well-settled. To prevail, a defendant must show that counsel's performance fell below prevailing professional standards and was prejudicial. (*Strickland v. Washington* (1984) 466 U.S. 668, 687-694 (*Strickland*).) To prove prejudice, defendant must demonstrate there is a "'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" (*People v. Ledesma* (1987) 43 Cal.3d 171, 217-218 .) """A reasonable probability is a probability sufficient to undermine confidence in the outcome." [Citations.]'" (*People v. Weaver* (2001) 26 Cal.4th 876, 925.)

"""[I]f the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged[,] . . . unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation," the claim [of ineffective assistance of counsel] on appeal must be rejected.' [Citations.] A claim of ineffective assistance in such a case is more appropriately decided in a habeas corpus proceeding. [Citations.]" (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.) There is nothing in the record to show why trial counsel did not object to the gang member's statement on hearsay grounds, nor that he was asked to explain the omission.

In any event, the gang member's statement at issue was not testimonial, and therefore did not violate the confrontation clause. Consequently, nothing suggests that if counsel had objected, the result of Guzman's trial would have been different. His IAC claim therefore fails.

Specifically, the Sixth Amendment guarantees a criminal defendant the right "to be confronted with the witnesses against him." (U.S. Const., 6th Amend.) In *Crawford v. Washington* (2004) 541 U.S. 36 (*Crawford*), the Supreme Court held the confrontation clause bars "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had a prior opportunity for cross-examination." (*Id.* at pp. 53-54) The *Crawford* court did not define the limits of what constitutes testimonial hearsay, but "[w]hatever else the term covers, it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations." (*Id.* at p. 68 (conc. opn. of Rehnquist, J.), fn. omitted.) The court used "the term 'interrogation' in its colloquial, rather than any technical legal sense," and included statements made "in response to structured police questioning." (*Id.* at p. 53, fn.4.)

Although the court has still not spelled out a comprehensive definition of testimonial, in *Davis v. Washington* (2006) 547 U.S. 813, 821, the court clarified that only "testimonial statements" implicate a defendant's confrontation right. Thus, for example, statements made to law enforcement officials in response to questioning "are not testimonial if given and taken for nonevidentiary purposes such as the need to cope with ongoing emergencies. [Citation.]" (*People v. Cage* (2007) 40 Cal.4th 965, 987.)

Here, when asked how collecting a commission would benefit a gang, Launi recalled a conversation he had with a member of Los Compadres regarding how the gang used "tax" money. Nothing indicates the gang member's statement was testimonial. There is no evidence that in speaking with Launi the gang member had any reason to anticipate his explanation would be used at a trial against Guzman or anyone else. (See *Crawford , supra,* 541 U.S. at p. 52 ["testimonial" statements included those

"'that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial'"].) Consequently, an objection on confrontation grounds would have been futile if counsel had made one, and Guzman's IAC claim is therefore without merit.

C. *Prosecutorial Misconduct*

Guzman contends the prosecutor committed misconduct in two separate instances, which we address in turn below. "The standards under which we evaluate prosecutorial misconduct may be summarized as follows. A prosecutor's conduct violates the Fourteenth Amendment to the federal Constitution when it infects the trial with such unfairness as to make the conviction a denial of due process. Conduct by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial misconduct under state law only if it involves the use of deceptive or reprehensible methods to attempt to persuade either the trial court or the jury. Furthermore, . . . when the claim focuses upon comments made by the prosecutor before the jury, the question is whether there is a reasonable likelihood that the jury construed or applied any of the complained-of remarks in an objectionable fashion. [Citation.]" (*People v. Morales* (2001) 25 Cal.4th 34, 44.)

"To preserve for appeal a claim of prosecutorial misconduct, the defense must make a timely objection at trial and request an admonition; otherwise, the point is reviewable only if an admonition would not have cured the harm caused by the misconduct. [Citation.]" (*People v. Price* (1991) 1 Cal.4th 324, 447.) Therefore, to avoid forfeiture or waiver of prosecutorial misconduct, a defendant generally "must make a timely objection, make known the basis of his [or her] objection, and ask the trial court to admonish the jury. [Citation.]" (*People v. Brown* (2003) 31 Cal.4th 518, 553.)

However, "[a] defendant will be excused from the requirement of making a timely objection and/or a request for an admonition if either would have been futile. [Citation.] In addition, the failure to request that the jury be admonished does not forfeit the issue for appeal if an admonition would not have cured the harm caused by the misconduct or the trial court immediately overrules an objection to alleged misconduct such that the defendant has no opportunity to make such a request. [Citation.]" (*People v. Cole* (2004) 33 Cal.4th 1158, 1201.)

"When a defendant makes a timely objection to prosecutorial argument [or such objection is excused], the reviewing court must determine first whether misconduct has occurred, keeping in mind that '"[t]he prosecution has broad discretion to state its views as to what the evidence shows and what inferences may be drawn therefrom"' [citation], and that the prosecutor 'may "vigorously argue his case" . . . , "[using] appropriate epithets warranted by the evidence."' [Citation.] Second, if misconduct had occurred, we determine whether it is 'reasonably probable that a result more favorable to the defendant would have occurred' absent the misconduct." (*People v. Welch* (1999) 20 Cal.4th 701, 752-753.)

1. Reasonable Doubt Standard

Guzman contends the prosecutor committed misconduct by using a dictionary definition of various terms in the reasonable doubt standard. He claims she erroneously defined the "abiding conviction" (CALCRIM No. 220) necessary to surmount the reasonable doubt standard as merely a strong belief, requiring reversal of the judgment because the statement "watered down" the level of proof necessary to meet the prosecution's burden.

The trial court instructed the jury with CALCRIM No. 220 in pertinent part as follows: "Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt." The trial court also instructed the jury it "must follow the law as I explain it to you, even if you disagree with it. If you believe that the attorneys' comments on the law conflict with my instructions, you must follow my instructions."

During closing argument, defense counsel explained that a "51 percent" belief or a "clear and convincing belief" that appellant committed the crime required a "not guilty" verdict. He further explained that to reach a guilty verdict the jury must have an "abiding conviction that what my client did was to cause cruel and extreme pain and that you have a clear conviction that the reason why he did it was to extort money from the victim."

On rebuttal, the prosecutor responded: "[Defense counsel] ended with this whole concept of beyond a reasonable doubt as if it was some magical thing that I've never heard of before. Guess what? That is the criminal justice system. The cases need to be proven to juries like you beyond a reasonable doubt." The prosecutor then pointed to CALCRIM No. 220, and "highly recommend[ed]" the jury take a look at it to understand the reasonable doubt burden of proof. She further explained that "[i]f you have two reasonable interpretations, one that pointed to guilt and one that pointed to innocence, absolutely vote not guilty." Finally, when discussing the meaning of "abiding conviction," the prosecutor explained that "[t]he dictionary definition of abiding means enduring or lasting. Conviction means belief or view. So at the end of the day, do you have a strong belief or view that the charges are true? And the only reasonable

interpretation of the evidence is that the defendant is guilty of all the charges and allegations."

Guzman did not object at trial to the use of the dictionary definitions he now claims constituted prosecutorial misconduct. Nor did he request an admonition from the trial court to correct any alleged misstatement or purported "watering down" of the prosecution's burden of proof. The trial court had correctly instructed the jury on the prosecution's burden of proof before the closing arguments, and if there was any conceivable harm, it could have been cured by an admonition. Consequently, Guzman's failure to timely object and request the court to admonish the jury precludes his claim of misconduct on appeal. (*People v. Cunningham* (2001) 25 Cal.4th 926, 1000-1001.)

Alternatively, Guzman argues that trial counsel rendered ineffective assistance by not objecting to the prosecutor's argument. As discussed above, Guzman must show that counsel's performance was deficient and that the deficient performance prejudiced him. (*Strickland*, *supra*, 466 U.S. at p. 687.) The Attorney General argues Guzman has not shown deficient performance because trial counsel had no reason to object considering the prosecutor directed the jury to CALCRIM No. 220 for the correct definition on the burden of proof. We agree. Even if the prosecutor's statement was erroneous, a reasonable attorney could have concluded that the trial court's jury instructions were sufficient to correct the error.

Furthermore, Guzman has not shown that a different result was reasonably probable. Guzman has not demonstrated a reasonable likelihood that the jury ignored CALCRIM No. 220 or that the prosecutor misstated the burden of proof. The prosecutor accurately stated that the reasonable doubt standard is not some "magical thing," but rather a standard employed by juries in criminal trials every day. The prosecutor in

referring to an "abiding conviction" as a "strong belief" did not equate the reasonable doubt standard with merely "clear and convincing evidence" or some lesser standard, as Guzman claims. Rather, she correctly explained "100 percent" certainty is not the governing standard, since "everything is open to some other possible explanation in life," just as CALCRIM No. 220 instructs. She properly described "abiding" and "lasting" or "enduring," and referred the jury to CALCRIM No. 220. The trial court also clearly and correctly instructed the jury with CALCRIM No. 220 regarding the reasonable doubt standard, and directed the jury to disregard statements of counsel that contradicted the court's instructions. We see nothing in the prosecutor's statements that led the jury astray, and we presume the jury understood and followed the trial court's instructions. (*People v. Williams* (2009) 170 Cal.App.4th 587, 607.)

2. Improper Use of Testimony

Guzman contends the prosecutor committed misconduct during her closing argument by improperly using evidence that the trial court allowed for the limited purpose of assessing a witness's credibility. At trial, a witness testified that she saw Alvarez being beaten. When asked if the person who beat Alvarez was in the courtroom, she claimed she did not see him. When the prosecutor asked her why she was not looking around the entire courtroom, the witness explained that she was "afraid that they're going to hurt [her] and [her] family."

During a break, the witness told Launi that she actually did recognize Guzman as the man that beat Alvarez, but she was afraid to identify him. The prosecutor alerted the trial court to the witness's statement and moved to admit Launi's testimony about what he heard. When Guzman objected on grounds of lack of discovery, the court allowed defense counsel an opportunity to cross-examine the witness outside the

presence of the jury. The court then allowed the witness to testify that she recognized Guzman as the man who beat Alvarez, and explain she refused to identify him earlier because she feared retaliation. The court precluded her from suggesting her fear of retaliation was founded in Guzman's gang affiliation. Specifically, the witness testified that she did not identify Guzman because "I was afraid," and when asked why she was afraid, she responded, "Because they followed me twice when I went to take my child to school." The trial court gave the jury a limiting instruction that stated, "The court is going to allow the answer with the limited purpose of the following: you can only use this information in assessing the credibility of this witness and for no other purpose."

During her closing argument, the prosecutor discussed the witness's credibility and why she initially lied under oath, as follows: "She chose to lie under oath. Why? Because she's that afraid of him. . . . When she takes a break, she goes into the hall and she tells Detective Launi, 'Hey, I do see him in there but I'm afraid because they have threatened me.' She gets back up on the witness stand and tells you, 'On two occasions, they followed me and my daughter to my daughter's school twice. I'm afraid because they are going to hurt me.' [¶] Who's 'they'? Gee, I wonder. Mr. Guzman's not a 'they.' But he is [*sic*: in?] the gang . . . ."

Guzman did not object to these remarks during closing arguments, and therefore forfeited his challenge on appeal. He argues in the alternative that trial counsel rendered ineffective assistance by not objecting to the prosecutor's remarks. Even if failing to object amounted to deficient representation, the omission did not change the outcome of the trial. (*Strickland*, *supra*, 466 U.S. at p. 687 [prejudice required].)

Guzman argues that the prosecutor's garbled phrase, "he is the gang," amounted to misconduct urging the jury to use the witness's claim that she was followed

by two people as substantive evidence that Guzman was a gang member, rather than solely to evaluate her credibility as the court instructed the jury. Guzman contends, "Instead of properly using the evidence only regarding [the witness's] credibility, [the prosecutor] used it to substantively prove that [Guzman] belonged to the Los Compadres gang." We presume, however, that the jury adhered to the court's instructions and Guzman offers no reason to suggest the jury ignored the court's specific admonition concerning the witness's testimony. (*People v. Holt* (1997) 15 Cal.4th 619, 662; *People v. Sanchez* (1995) 12 Cal.4th 1, 70 ["[W]e presume the jury treated the court's instructions as statements of law, and the prosecutor's comments as words spoken by an advocate in an attempt to persuade"]; *People v. Cruz* (2001) 93 Cal.App.4th 69, 73 [court must presume the jury "'meticulously followed the instructions given'"].) His challenge therefore fails.

D. *Cumulative Error*

Guzman contends that the cumulative effect of trial errors requires reversal of the judgment. Multiple trial errors may have a cumulative effect that in a closely balanced case require reversal where it is reasonably probable the combined errors affected the verdict. (*People v. Hill* (1998) 17 Cal.4th 800, 844-848; *People v. Holt* (1984) 37 Cal.3d 436, 458-459; *People v. Wagner* (1975) 13 Cal.3d 612, 621.) Here, there are no errors to cumulate, so the doctrine does not apply. (*People v. Anderson* (2001) 25 Cal.4th 543, 606.)

III

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

THOMPSON, J.